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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,487	12/19/2001	Stefan Remke	MERCK 2347	7988
23599	7590	09/14/2004	EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			HWU, DAVIS D	
		ART UNIT		PAPER NUMBER
				3752

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/018,487	REMKE ET AL.
Examiner	Art Unit	
Davis Hwu	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 August 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-11 and 13-19 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 19 is/are allowed.

6) Claim(s) 1,5,8 and 23 is/are rejected.

7) Claim(s) 2-4,6,7,9-11,13-18 and 20-22 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Response to Amendment

1. Applicant's amendment of August 23, 2004 is acknowledged and entered.
2. The final rejection of April 23, 2004 is withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey.

Bailey shows spray-pyrolysis or spray-drying plant, a plant which is constructed vertically or horizontally, comprising:

- a) a reaction tube 10 accommodated in within an outer tube 20 of heat-resistant steel sheeting in such a way that an annular space is formed between the two tubes,
- b) an atomization system 30 located at one end of the tubes and a gas outlet 36 is located at the opposite end of said tubes ,
- c) one or more jacket connectors at inlet 12 which lead into said annular space, at the height of the atomization system or distributed over the length of the plant, and
- d) gas inlet slots or nozzles 42 and 44 leading into the reaction tube.

Claim Rejections - 35 USC § 103

6. Claims 8 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narumiya.

The patent to Narumiya discloses a gas permeable thermal insulator comprising a porous material which is heat-resistant up to 1200 degrees C and has a pore diameter of from 1 to 5 micrometers (Column 10 and Tables 1 and 2). Narumiya does not disclose a reaction tube, however, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Since the material disclosed by Narumiya comprises the temperature and pore diameters as recited, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the material of Narumiya could be used to make a reaction tube as claimed by the instant invention.

Allowable Subject Matter

7. Claims 2-4, 6, 7, 9-11, 13-18, and 20-22 are allowed.
8. Claim 19 is allowed.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Lipp are pertinent to Applicant's invention.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis Hwu whose telephone number is 703-305-1663. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703)308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Davis Hwu